196

CF0000060166

Cr A 255/98

D3 (Cri)

S.T. No. 381/97

(2)

APPEAL PRISONER

No. 8268 Name रवा पोढिया

Father's Name रवा हिड़मा Resident ग्रा. पेदमपल्ली थाना दोरनापाल, दन्तेवाड़ा

Age 30 वर्ष Sentenced to आजीवन कारावास on 16/7/98

Under Section 302 भा०दं०वि० by सत्र न्यायालय जगदलपुर बस्तर (म०प्र०)

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :-
2. Date of which copy received :- 16/7/98
3. Date on which appeal sent :- 17/98
4. Whether the prisoner wished to be represented or not :- Yes / No.

No. 82/98 Name रवा पोढिया S/o रवा हिड़मा

Continued in सर्किल Jail जगदलपुर

No. 974/आजन्मकेण-98 Dated 2/8/98

Forwarded to the CHIEF JUDICIAL MAGISTRATE जगदलपुर बस्तर (म०प्र०)

together with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

अधीक्षक
केन्द्रीय जेल जगदलपुर

Su perintendent Central / Distt. / Sub-Jail.

Date of receipt in C. J. M. Office. 7.8-98

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. 33 dated 10-8-98

Forwarded to the माननीय सत्र न्यायाधीश महोदय जगदलपुर

ए० के० श्रीवास्तव
मुख्य न्यायिक मजिस्ट्रेट, जगदलपुर

C. R. MAGISTRATE

Date of receipt in Applieate Court

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. 2552/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. V.K. SHRIVASTAVA, JJ.

02/12/2005

Smt. Kiran Jain, counsel for the appellant.

Shri Ashish Shrivastava, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

With consent of counsel for the parties, the appeal is heard finally.

Oral judgment.

By this appeal through the Superintendent, Central Jail, Jagdalpur, accused/appellant Rava Podiya has questioned the legality of judgment of conviction and sentence dated 16/07/1998 passed by the learned Sessions Judge, Jagdalpur, in Sessions Trial No.381/97, whereby learned Sessions Judge after holding the accused/appellant guilty for the commission of murder of his father, convicted under Section 302 of the I.P.C and sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that on 30/08/1997 accused/appellant assaulted with a wooden club to his father Rava Hadma on account of the dispute regarding giving less share of the land in the partition. However, the report was not lodged at the Police Station. The same was lodged on 05/09/1997 after the death of Rava Hadma on 04/09/1997. The Station House Officer, Police Station: Dornapal after registering the case, sent the dead body of Rava Hadma for postmortem to the Primary Health Centre, Dornapal where Doctor S.K. Shandilya (PW/5) conducted postmortem on the body of Rava Hadma and gave his report Ex.P/5. After completion of investigation, charge-sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Sukma, who in turn committed the case to the Sessions Judge , Jagdalpur.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The prosecution in order to prove the offence against the accused/ appellant examined eight witnesses. The learned Sessions Judge recorded the statement of accused/appellant under Section 313 of the Cr.P.C., in which the accused/appellant denied the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

After hearing the arguments of learned counsel for the parties, learned Sessions Judge convicted and sentenced the accused/appellant in the manner mentioned in the earlier part of this judgment.

We have heard Smt. Kiran Jain, learned counsel for the accused/ appellant and Shri. Ashish Shukla, learned Additional Public Prosecutor with Mr. Akhil Mishra, learned Panel Lawyer on behalf of the State/ respondent. We have also perused the evidence and the judgment of the trial Court.

The fact of the homicidal nature of death has not been disputed by learned counsel for the accused/appellant. Apart from that, PW-4 Rava Bandi, wife of the deceased, has stated that the accused/appellant assaulted her husband with a wooden club and on account of which her husband Rava Hadma died. PW-5- Doctor S.K. Shandilya has also stated that the cause of death was injuries on the chest and death was homicidal in nature. Therefore, in view of the evidence, it is established that death of Rava Hadma was homicidal in nature.

Now, coming to the involvement of the accused/appellant in committing the murder of his father, PW-4 Rava Bandi mother of the accused/appellant and wife of deceased has categorically stated that in her presence the accused/appellant attacked Rava Hadma with a wooden club on his chest, mouth and stomach. Doctor S.K. Shandilya (PW-5) has stated that on account of the injuries sustained by Rava Hadma, he died. PW-7 Barse Sukka has stated that the deceased gave oral dying declaration before him that the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused/appellant Rava Podiya attacked him with a wooden club and he died after four days of the incident. In view of the above evidence, the involvement of the accused/appellant for commission of murder of his father stands established.

Learned counsel for the accused/appellant argued that there is no definite medical evidence that which injury was fatal that was sufficient in the ordinary course of nature to cause the death of the deceased. She further argued that Rava Hadma died after four days of the injuries as he had not taken any treatment and looking to the weapon of offence, there was a dispute between the father and accused/appellant regarding giving less share of the land in partition and in that process, the accused/appellant assaulted his father. Therefore, offence under Section 302 of the I.P.C. was not made out against the accused/appellant.

If we examine the evidence of PW/4 Rava Bandi, wife of deceased, she has stated that the accused/appellant assaulted deceased with a wooden club on chest, stomach and mouth because the deceased said that the accused/appellant was not doing any work that is why accused/appellant assaulted her husband. It is admitted position that deceased Rava Hadma died on 04/09/1997 after four days of the incident. No treatment was given to the deceased. PW/5 Doctor S.K. Shandilya, who conducted the postmortem, has stated that the injuries were on the chest and the whole body was putrefied, therefore, he was not able to decide about the weapon of offence by which the injuries were caused. Therefore, there is no definite medical evidence to show that the accused/appellant assaulted the deceased with such a weapon and caused such injuries which were sufficient in the ordinary course of nature to cause the death.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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From the record, it can be inferred as per the evidence of wife of the deceased that on the fateful day, the deceased – father of the accused/appellant scolded the accused/appellant for not doing any work and the accused/appellant picked up the wooden club from the place of occurrence and assaulted his father, as a result of which he died after four days of the incident. Therefore, from the above evidence, there is no positive evidence to indicate that the accused/appellant assaulted the deceased with intention to cause his death. From the evidence it appears that all of a sudden, in a heat of passion, when the deceased scolded the accused/appellant , he picked up the wooden club and assaulted his father, and he received injuries and died after four days of the incident. Therefore, we are of the opinion that the offence under Section 304 Part II of the IPC is made out against the accused/appellant.

In the result, the appeal is partly allowed. The conviction and sentence passed against accused/appellant under Section 302 of the IPC are set aside. Instead thereof, the accused/appellant is convicted for commission of offence under Section 304 Part II of the I.P.C. and sentenced to undergo R.I. for eight years.

The period of detention already undergone by the accused/appellant during investigation and trial and pendency of this appeal, the accused/appellant shall be entitled for set-off of the same against above eight years of sentence.

In view of the above, M.(Cr.)P. No.1540/2004 and I.A. No.3567/2003 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K. Shrivatava
Judge

Raju

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